

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 752 of 2007(M)

PETITIONER:

SAJILA P.K., AGED 36 YEARS,
D/O.DIVAKARAN, POOKKATTU HOUSE,
PULIYAVU P.O., PARAKKADAVU VIA.,
VADAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.C.R.SIVAKUMAR
SMT.G.VIDYA
SMT.C.B.BHAGYALEKSHMY

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, DEPARTMENT OF EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.
2. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY,
KERALA PUBLIC SERVICE COMMISSION OFFICE,
PATTOM, THIRUVANANTHAPURAM.
3. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
KOZHIKODE.

R1 BY GOVT.PLEADER SRI. A.J. VARGHESE.
R2 & R3 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.M.JOSEPH, J.

WP.(C) No. 752 OF 2007

Dated this the 26th day of February, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is the first rank holder in the supplementary list published by the third respondent for the post of HSA (English). It was published on 21.10.2005. The 91st candidate in the main list is one Smt. Shymila.K., who reported to the Public Service Commission that she is not ready to join in the said vacancy due to her employment in Government Higher Secondary School, Payyambra. Ext.P2 dated 10.7.2006 is receipt to show that intimation was received. Petitioner therefore sent Ext.P3 laying a claim on the basis of Smt.Shymila's relinquishment. But PSC has not accepted her claim. Petitioner seeks mandamus to advise her in the non-joining vacancy of Shymila, to report all the existing vacancies in the District of Kozhikode for the post of High School Assistant (English) and to direct the third respondent to advise and appoint the petitioner and for a direction to consider Ext.P3.

2. Counter affidavit is filed, wherein it is stated that Smt.Shymila

Rank No.91 Thiyya is the last candidate in the main list and she was advised to the vacancy reported on 23.8.2006 by the Deputy Director of Education, Kozhikode. It is stated that the request for relinquishment was received only on 29.8.2006, after the receipt of the vacancies, and in this case relinquishment was received after the receipt of the vacancies and hence not considered. NJD vacancy has not been reported yet as well. It is stated that the main list of the ranked list got exhausted when candidates were being considered to the vacancies received on 23.8.2006 and after the exhaustion of the main list the very existence of the ranked list ceased and other remaining candidates in the supplementary list have no claim at all. It is stated that the petitioner could not be advised as the main list got exhausted.

3. Petitioner filed reply affidavit dated 19.1.2007. Therein it is inter alia stated as follows:

“According to the petitioner, when the petitioner enquired about the date of submission of the above mentioned relinquishment the petitioner came to know that Shymila. K sent the relinquishment letter to the third respondent on 10.7.2006 as per Ext.P2 record and

thereafter the said candidate on 16.8.2006 personally visited the office of the 3rd respondent and submit another letter intimating that her name may be removed from the list. According to the petitioner she should get the employment in the reported vacancy of 113.”

This court directed the third respondent to file an additional counter affidavit in regard to the allegations based on Ext.P4. Accordingly an additional counter affidavit is filed. In the additional counter affidavit it is inter alia stated as follows:

“It is submitted that Ext.P4 dated 16.8.2006 was received by the Commission on 29.8.2006 which was duly endorsed in the office of the Commission with the dated seal (29.8.2006) evidencing the said fact of the endorsement made of Ext.P4 by the office of the Commission.”

Therefore the consistent case of the PSC is that relinquishment was received only on 29.8.2006.

4. Thereupon again the petitioner filed a reply affidavit to the additional counter affidavit. Therein a case is set up that Ext.P4 was submitted due to the interests of the petitioner and after attestation and

counter signature by the District Information Officer on 16.8.2006, petitioner along with Smt.Shymila submitted the same in the office of the PSC. It is also stated that the seal affixed by the PSC is not fair. Allegations in the additional counter affidavit are stated to be false. It is stated that paragraph 3 of the additional counter affidavit is false.

5. The case sought to be set up in the latest reply affidavit dated 26.2.2007 appears to be an improvement over the version given in the reply affidavit dated 19.1.2007. In the reply affidavit dated 19.1.2007 petitioner did not have a case that petitioner accompanied Smt.Shymila. I would think that in the facts of this case, petitioner has failed to establish that she had a claim based on a valid relinquishment given by Smt.Shymila. In view of the undisputed fact that the main list is exhausted, petitioner cannot have a claim based on the alleged relinquishment.

Writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

W.A. No. OF

JUDGMENT

Dated this the day of February, 2006.